IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

MONDAY, THE 17TH SEPTEMBER 2007 / 26TH BHADRA 1929

RPFC.No. 42 of 2002(A)

M.C.NO.510/2000 OF FAMILY COURT, MANJERI DTD. 14/01/02
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REVISION PETITIONERS/PETITIONERS:-
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1. **KARUVALLY SAJITHA,**
   D/O.KUNHIMUHAMMED,
   KARUVALLY HOUSE,
   MAKKARAPARAMBA P.O.,
   MALAPPURAM DISTRICT.

2. **MUHAMMED SHAFEEQUE (MINOR)**

3. **NAHIA SHERIN (MINOR)**

BY ADV. SRI.K.M.SATHYANATHA MENON.

RESPONDENT/RESPONDENT:

V.T.MOOSA,S/O.MOHAMMED,
VETTANTHODI HOUSE,
KOZHIKKOTTUPARAMBU,
VELILLA AMSOM,KADANNAMANNA DESOM P.O.,
MALAPPURAM DISTRICT.

BY

THIS REV.PETITION(FAMILY COURT) HAVING BEEN FINALLY ON 17/09/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

prv.

K.R.UDAYABHANU, J

R.P.(FC)No.42 of 2002

Dated this the 17th day of September, 2007

O R D E R

The revision petitioner is the first petitioner/wife in M.C.No.510/00 in the file of Family Court, Manjeri who had initiated proceedings under Section 125 of Crl.P.C. The court below allowed maintenance only to petitioners 2 and 3 in M.C. i.e., minor children aged 4 years and 1 year respectively at the rate of Rs.400/- per month. The claim of the first petitioner/revision petitioner was rejected as it appeared that she is living separately without sufficient reasons.

2. It is contended by the counsel for the revision petitioner that the respondent/husband got remarried and further in the proceedings initiated under Section 498A he has been convicted by the court of Judicial First Class Magistrate. It is pointed that in the above circumstances the contention of the respondent that the revision petitioner is living separately without sufficient reason cannot be upheld.

3. The evidence adduced in the matter consisted of the

testimony of PW1 the petitioner and RW1 the respondent and Exts. D1 to D7.

4. It is the case of the petitioner that during the second pregnancy period and after the delivery she used to be ill treated by the respondent demanding dowry. According to her she was made to go away from the matrimonial house on account of the cruelties inflicted.

5. The Family court found that during the second pregnancy she was through out living in the house of the respondent and the fact that the petitioner underwent surgery in the hospital and that it was the respondent who had paid the medical bills and that she was taken to her house on the 40th day after delivery indicated that she was taken to her house as per the custom prevailing in the community and that it appeared that she loved to live in her house, in the luxurious circumstances rather than returning to the house of the respondent. The court below has also found that the photographs produced that were taken after she returned to her house indicated that the couple were happy and hence declined maintenance to the petitioner.

6. Although the respondent was served there is no

appearance for the respondent.

7. It is the version of PW1 through out that she used to be ill treated after she conceived for the second time and that the respondent was making demands of dowry and he quarreled with her father with respect to the above demand. Her case is that it is on account of the ill treatment which continued after delivery and that she was taken to her house by her father. It is the case of the respondent that it was when she was living with her parents that Exts. D1 to D3 photographs were taken. It is mentioned that the snaps were taken on the third day after she was brought to her parental home. It appears that the reliance placed on the above photographs is not very logical. It is pointed out by the counsel for the revision petitioner that at that time also she was having wish to rejoin her husband. It is the case of the petitioner that thereafter the respondent has failed to maintain her and the children. It was thus that the proceedings were initiated. Exts. D4 and D4(a) receipts of money order which she refused, was sent during the pendency of the said proceedings is not after receipt of notice. It was refused as the name mentioned was not that of the petitioner. Ext. D5 is the

photocopy of the letter. It is submitted that Ext. D5 letter was sent subsequent to the initiation of the present proceedings. In view of the evidence of PW1 which stands not impeached, I find that there is no ground to infer that she is living apart without sufficient reasons.

8. It is her evidence that the respondent is a trader in foreign goods and that he is earning Rs.5,000/- per month. RW1 has denied the same and he has stated that he is a day labourer. Both sides have not adduced any objective evidence in this regard. In the circumstances, petitioner is entitled to get maintenance and I find that a sum of Rs.400/- although on the lower side is to be allowed to her. Hence, the respondent was directed to pay maintenance to the first petitioner also at the rate of Rs.400/- from the date of filing of the application.

The revision petition is allowed.

K.R.UDAYABHANU,
JUDGE

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